

DEPARTMENT OF TRANSPORTATION**AUDITS AND INVESTIGATIONS**

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September 29, 2010

Ronald E. Brummett
Executive Director
Kern Council of Governments
1401 19th Street, Suite 300
Bakersfield, CA 93301

Re: Kern Council of Governments
Audit of Indirect Cost Allocation Plan for FY 2009/2010
File Number: P1591-0060

Dear Mr. Brummett:

We have audited the Kern Council of Governments' (KCOG) Indirect Cost Allocation Plan (ICAP) for the fiscal year (FY) ended June 30, 2010, to determine whether the ICAP is presented in accordance with 2 Code of Federal Regulations (CFR) Part 225 and the California Department of Transportation's (Department) Local Program Procedures (LPP) 04-10. KCOG management is responsible for the fair presentation of the ICAP. KCOG proposed an indirect cost rate of 86.3 percent of total direct salaries and wages plus fringe benefits.

Our audit was conducted in accordance with the Standards for Performance Audits set forth in the *Government Auditing Standards* issued by the Comptroller General of the United States of America. The audit was less in scope than an audit performed for the purpose of expressing an opinion on the financial statements of KCOG. Therefore, we did not audit and are not expressing an opinion on the KCOG's financial statements.

The standards require that we plan and perform the audit to obtain reasonable assurance about whether the data and records reviewed are free of material misstatement, as well as material noncompliance with fiscal provisions relative to the ICAP. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the data and records reviewed. An audit also includes assessing the accounting principles used and significant estimates made by KCOG, as well as evaluating the overall presentation.

The accompanying ICAP was prepared on a basis of accounting practices prescribed in the 2 CFR Part 225 and the Department's LPP 04-10, and is not intended to present the results of operations of KCOG in conformity with generally accepted accounting principles.

The scope of the audit was limited to select financial and compliance activities. The audit consisted of recalculation of the ICAP, a limited review of KCOG's Overall Work Program for FY 09/10, a review of KCOG's single audit report for the FY ended June 30, 2008, inquiries of KCOG personnel and reliance placed on the single audit report for the FY ended June 30, 2008, and prior audit field work performed by the Department in October 2005. We believe that our audit provides a reasonable basis for our conclusion.

Because of inherent limitations in any financial management system, misstatements due to error or fraud may occur and not to be detected. Also, projections of any evaluation of the financial management system to future periods are subject to the risk that the financial management system may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

The results of this audit were communicated to Gregory J. Palomo, KCOG's Administrative Assistant on June 15, 2010, and September 14, 2010. Our findings and recommendations take into consideration KCOG's response to our draft findings dated June 23, 2010, and September 21, 2010.

AUDIT RESULTS

Based on audit work performed, KCOG's ICAP for the FY ended June 30, 2010, is presented in accordance with 2 CFR Part 225 and LPP 04-10. The approved indirect cost rate is 86.3 percent of total direct salaries and wages, plus fringe benefits for the FY ended June 30, 2010. The approval is based on the understanding that a carry forward provision applies and no adjustment will be made to previously approved rates.

Audit Findings

Finding 1

KCOG included several organizations (California Association of Council of Governments (CALCOG), California Transit Associations (CTA), and Bakersfield Chamber of Commerce) membership fees in the indirect cost pool. While the fees were not material to the ICAP rate, these organizations are involved in lobbying activities which are unallowable per 2 CFR Part 225.

CALCOG's website (www.calcog.org) states that:

- "CALCOG's two primary activities are to provide public policy advocacy and intergovernmental coordination with the state legislature, state agencies, the League of

California Cities, California State Association of Counties, California's Congressional Delegation and federal officials."

- "Executive Director ... leads all advocacy and lobbying activities and is responsible for all other staff services."

Bakersfield Chamber of Commerce's website (www.bakersfieldchamber.org) states that:

- "Chamber delegations take issues to Sacramento and Washington D.C. to ensure the voice of business is heard."
- Active lobbying on legislation that has impacts for business."

CTA's website (www.caltransit.org) states that:

"Working in the State Capitol, our legislative advocates have successfully lobbied for increased transit funding and transit-friendly policy, resulting in billions of dollars for the state's public transportation industry. The California Transit Association believes that involving its members results in successful lobbying. Members are prepared and encouraged to write letters, visit legislators, and testify before legislative committees and rule-making agencies."

2 CFR Part 225, Attachment B, Section 24, Lobbying, part (b), states that: "Executive Lobbying Costs. Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the Executive Branch of the Federal Government to give consideration or to act regarding a sponsored agreement or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a federally-sponsored agreement or regulatory matter on any basis other than the merits of the matter."

2 CFR Part 225, Attachment B, Section 28, Memberships, subscriptions, and professional activity cost, part (d), states that: "Costs of memberships in organizations substantially engaging in lobbying are unallowable."

Recommendation

CALCOG, CTA, and Bakersfield Chamber of Commerce membership fees should be identified as unallowable costs, instead of indirect costs, when KCOG prepares future ICAPs.

KCOG's Response

KCOG agreed with the finding and recommendation.

Analysis of Response

The finding and recommendation remain unchanged.

Finding 2

KCOG did not appropriately segregate legal costs (County Counsel) as direct and indirect costs in FY 09/10 ICAP. KCOG included total legal costs of \$11,600, which were part of the professional services expense in FY 09/10 budget, as indirect costs only. Our review of KCOG's actual FY 07/08 legal costs, the basis for FY 09/10 budgeted legal costs, showed that KCOG segregated actual legal costs between direct and indirect cost accounts.

2 CFR Part 225, Appendix A, Part E. Direct Costs, Section 1. General, states that: "Direct Costs are those that can be identified specifically with a particular final cost objective."

2 CFR Part 225, Appendix A, Part B. Definition, Section 11. Cost Objective, states that: "Cost objective means a function, organizational subdivision, contract, grant, or other activity for which cost data are needed and for which costs are incurred."

Recommendation

KCOG should implement a consistent method of segregating legal costs as direct and indirect costs when preparing future ICAPs.

KCOG's Response

KCOG agreed with the finding and recommendation.

Analysis of Response

The finding and recommendation remain unchanged.

This report is intended for the information of KCOG, Department Management, the California Transportation Commission, and the Federal Highway Administration (FHWA). This report is a matter of public record and will be included on the "Reporting Transparency in Government" website.

Please retain the approved ICAP for your files. Copies were sent to the Department's District 6, the Department's Division of Accounting and the FHWA. If you have any questions, please contact Dadang Prihadi, Auditor, at (916) 323-7886 or Nancy Shaul, Audit Manager, at (916) 323-7940.

ORIGINAL SIGNED BY:

MARYANN CAMPBELL-SMITH
Chief, External Audits – Local Governments

Attachment

- c: Brenda Bryant, Director, Financial Services, Federal Highway Administration
Sue Kiser, Director, Planning and Air Quality, Federal Highway Administration
James Ogbonna, Chief, Rural Transit and Intercity Bus Branch, Division of Mass
Transportation, California Department of Transportation
David Saia, LAPM/LAPG Coordinator, Division of Local Assistance, California
Department of Transportation
Jenny N. Tran, Associate Accounting Analyst, Local Program Accounting Branch,
Division of Accounting, California Department of Transportation
Andrew Knapp, Associate Transportation Planner, Regional and Interagency Planning,
Division of Transportation Planning, California Department of Transportation
Hector Rangel, Kern Regional Coordinator, District 6, California Department of
Transportation
Jim Perrault, DLAE, Chief, Office of Local Assistance, Division of Transportation
Planning, District 6, California Department of Transportation
P1591-0060

**Kern Council of Governments
Indirect Cost Plan**

The indirect cost rate contained herein is for use on grants, contracts and other agreements with the Federal Government and California Department of Transportation (Caltrans), subject to the conditions in Section II. This plan was prepared by the *Kern Council of Governments* and approved by Caltrans.

SECTION I: Rates

<u>Rate Type</u>	<u>Effective Period</u>	<u>Rate*</u>	<u>Applicable To</u>
Fixed with carry forward	7/1/09 to 6/30/10	86.3%	All Programs

*Base: Total Direct Salaries and Wages plus fringe benefits

SECTION II: General Provisions

A. Limitations:

The rates in this Agreement are subject to any statutory or administrative limitations and apply to a given grant, contract, or other agreement only to the extent that funds are available. Acceptance of the rates is subject to the following conditions: (1) Only costs incurred by the organization were included in its indirect cost pool as finally accepted: such costs are legal obligations of the organization and are allowable under the governing cost principles; (2) The same costs that have been treated as indirect costs are not claimed as direct costs; (3) Similar types of costs have been accorded consistent accounting treatment; and (4) The information provided by the organization which was used to establish the rates is not later found to be materially incomplete or inaccurate by the Federal Government or Caltrans. In such situations the rate(s) would be subject to renegotiations at the discretion of the Federal Government or Caltrans; (5) Prior actual costs used in the calculation of the approved rate are contained in the grantee's Single Audit, which was prepared in accordance with OMB Circular A-133. If a Single Audit is not required to be performed, then audited financial statements should be used to support the prior actual costs; and, (6) The estimated costs used in the calculation of the approved rate are from the grantee's approved budget in effect at the time of approval of this plan.

B. Accounting Changes:

This Agreement is based on the accounting system purported by the organization to be in effect during the Agreement period. Changes to the method of accounting for costs, which affect the amount of reimbursement resulting from the use of this Agreement, require prior approval of the authorized representative of the cognizant agency. Such changes include, but are not limited to, changes in the charging of a particular type of cost from indirect to direct. Failure to obtain approval may result in cost disallowance.

C. Fixed Rate with Carry Forward:

The fixed rate used in this Agreement is based on an estimate of the costs for the period covered by the rate. When the actual costs for this period are determined either by the grantee's Single Audit or if a Single Audit is not required, then by the grantee's audited financial statements any differences between the application of the fixed rate and actual costs will result in an over or under recovery of costs. The over or under recovery will be carried forward, as an adjustment to the calculation of the indirect cost rate, to the second fiscal year subsequent to the fiscal year covered by this plan.

D. Audit Adjustments:

Immaterial adjustments resulting from the audit of information contained in this plan shall be compensated for in the subsequent indirect cost plan approved after the date of the audit adjustment. Material audit adjustments will require reimbursement from the grantee.

E. Use by Other Federal Agencies:

Authority to approve this agreement by Caltrans has been delegated by the Federal Highway Administration, California Division. The purpose of this approval is to permit subject local government to bill indirect costs to Title 23 funded projects administered by the Federal Department of Transportation (DOT). This approval does not apply to any grants, contracts, projects, or programs for which DOT is not the cognizant federal agency. The approval will also be used by Caltrans in state-only funded projects.

F. Other:

If any federal contract, grant, or other agreement is reimbursing indirect costs by a means other than the approved rate(s) in this Agreement, the organization should (1) credit such costs to the affected programs, and (2) apply the approved rate(s) to the appropriate base to identify the proper amount of indirect costs allocable to these programs.

G. Rate Calculation

FY 2010 Budgeted Indirect Costs		\$ 971,183
Carry Forward from FY 2008		\$ 275,468
Estimated FY 2010 Indirect Costs		\$1,246,651
FY 2010 Budgeted Direct Salaries and Wages plus fringe benefits		\$1,445,319
FY 2010 Indirect Cost Rate		86.3%

CERTIFICATION OF INDIRECT COSTS

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal to establish billing or final indirect costs rates for fiscal year 2010 (July 1, 2009 to June 30, 2010) are allowable in accordance with the requirements of the federal and state award(s) to which they apply and OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments." Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to federal and state awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated, as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government and Caltrans will be notified of any accounting changes that would affect the fixed rate.

I declare that the foregoing is true and correct.

Governmental Unit: Kern Council of Governments

ORIGINAL SIGNED BY:

Signature: _____

Reviewed, Approved and Submitted by:

Name of Official: Ronald E. Brummett

Title: Executive Director

Date of Execution: 08/13/09

ORIGINAL SIGNED BY:

Signature: _____

Prepared by:

Name of Official: Gregory J. Palomo

Title: Administrative Assistant

Phone: 661-861-2191

INDIRECT COST RATE APPROVAL

The State DOT has reviewed this indirect cost plan and hereby approves the plan.

ORIGINAL SIGNED BY:

Signature _____

Reviewed and Approved by:
(Name of Audit Manager)

Title: Chief-External Audit

Date: 9/28/10

Phone Number: (916) 323-7105

ORIGINAL SIGNED BY:

Signature _____

Reviewed and Approved by:
(Name of auditor) DADANG PRITHADI

Title: AUDITOR

Date: 9/28/10

Phone Number: (916) 323-7886



**Kern Council
of Governments**

June 23, 2010

Maryann Campbell-Smith, Chief, External Audits
Department of Transportation
Audits and Investigations
1304 O Street, Suite 200
P. O. Box 942874 – MS 2
Sacramento, CA 94274-0001

Dear Ms. Campbell-Smith:

The Kern Council of Governments (Kern COG) is aware now that CALCOG dues are deemed 100% unallowable. We will make the necessary corrections to future ICAP submittals.

If you require any additional information, please do not hesitate to contact me at (661) 861-2191.

Sincerely,

ORIGINAL SIGNED BY:

Gregory J. Palomo
Administrative Assistant

Enclosures



**Kern Council
of Governments**

September 21, 2010

Maryann Campbell-Smith, Chief, External Audits
Department of Transportation
Audits and Investigations
1304 O Street, Suite 200
P. O. Box 942874 – MS 2
Sacramento, CA 94274-0001

Attention: Dadang Prihadi

In response to the finding during the review of our FY 2009-2010 ICAP submittal, Kern COG will try to more accurately define the direct and indirect county counsel charges in future ICAP submissions.

If you require any additional information, please do not hesitate to contact me at (661) 861-2191.

Sincerely,

ORIGINAL SIGNED BY:

Gregory J. Palomo
Administrative Assistant

Enclosures